



Frequently Asked Questions About the Re-Proposal to Designate Critical Habitat for the Endangered San Diego Fairy Shrimp

Q. What is the San Diego fairy shrimp?

The San Diego fairy shrimp (*Branchinecta sandiegonensis*) is a small, delicate freshwater crustacean found only in vernal pools in Orange and San Diego counties, California, and extreme northwestern Baja California, Mexico. The San Diego fairy shrimp was first identified as a new species in 1993. Its historical distribution is relatively unknown because the majority of vernal pools in southern California were lost prior to 1990.

The San Diego fairy shrimp was listed as an endangered species under the Endangered Species Act of 1973, as amended (Act), on February 3, 1997. In September 1998, we completed a Recovery Plan for the Vernal Pools of Southern California which outlines measures that, if implemented, could promote the recovery of the San Diego fairy shrimp and its specialized habitat.

Q. What is a vernal pool?

Vernal pools are shallow, seasonal wetlands that fill with water during the winter rains and generally dry up before summer. As the pools dry and the surface water recedes, unique and dynamic flora develop in its place. A variety of plants and animals, many of them rare species, live in vernal pools. Vernal pools are typically occur on mesa tops or valley floors surrounded by low hills. It is estimated that 90-97 percent of southern California's vernal pools have been lost to habitat loss and degradation. The largest number of remaining vernal pools, including those inhabited by the San Diego fairy shrimp, are located in San Diego County.

Q. What is critical habitat?

Critical habitat is defined as specific areas that have been found to be essential to the conservation of a federally listed species, and which may require special management considerations or protection. Critical habitat is determined using the best available scientific and commercial information about the physical and biological needs of the species. These needs include:

- Q space for individual and population growth, and for normal behavior;
- Q food, water, light, air, minerals or other nutritional or physiological needs;
- Q cover or shelter;
- Q sites for breeding, reproduction, and rearing of offspring; and
- Q habitat that is protected from disturbance or is representative of the historical geographic and ecological distribution of a species.

Q. What are the primary constituent elements essential to the conservation of the San Diego fairy shrimp?

Habitat essential to the conservation of the San Diego fairy shrimp includes soils with an underlying claypan or hardpan layer that allows for water retention. Examples of these soils include: Huerheguero, Olivenhain, Placentia, Redding, and Stockpen. Areas that provide for dormant San Diego fairy shrimp eggs (cysts) are also an important component of vernal pool habitat. Due to fluctuations in rainfall not all vernal pools may fill in any given year and San Diego fairy shrimp cysts are able to lie dormant for several years until conditions are favorable for the cysts to hatch. Another primary habitat component for the San Diego fairy shrimp is the

topography surrounding vernal pools. In some cases, vernal pools fill with water as a direct result of rainfall, but in other instances the surrounding basin provides the subsurface or surface waterflow necessary to fill the pools.

Q. Why is the Service re-proposing critical habitat for the San Diego fairy shrimp?

In compliance with a Court order, we published a final rule in the Federal Register on October 23, 2000, designating approximately 4,025 acres of critical habitat for the San Diego fairy shrimp. Following the publication of our final rule a lawsuit challenging the designation was filed by multiple parties. The lawsuit was consolidated with two additional lawsuits concerning designation of critical habitat for the coastal California gnatcatcher. All three lawsuits were subsequently transferred to the U.S. District Court for the Central District of California (Building Industry Association of Southern California et al. v. Norton, CV 01-7028).

On June 11, 2002, the District Court granted our request for a remand of the critical habitat designation for the San Diego fairy shrimp so that we could reconsider economic impacts associated with critical habitat designation. The District Court ordered us to complete a new proposed rule on or before April 11, 2003.

Areas that were designated as critical habitat in our October 23, 2000 final rule will retain their designation until a new, revised final critical habitat designation becomes effective.

Q. Are lands are covered by approved Habitat Conservation Plans being proposed as critical habitat?

No. We are not proposing preserve areas within the boundaries of approved Habitat Conservation Plans (HCP) as critical habitat. These lands provide special management or protections for the San Diego fairy shrimp, therefore, we do not believe they meet the definition of critical habitat under section 3(5)(a) of the Act. Additionally, if these lands were to be determined to qualify as critical habitat, it is appropriate to consider excluding them under section 4(b)(2) of the Act based on impacts to future habitat conservation planning efforts that could result from proposing or designating these lands as critical habitat.

Section 4(b)(2) of the Act states that the Secretary may “exclude any area from critical habitat if...the benefits of such exclusion outweigh the benefits of specifying such area, unless...the failure to designate such areas as critical habitat will result in the extinction of the species concerned.”

We believe that the benefits of excluding lands within approved HCPs will outweigh the benefits of including them. HCPs, particularly large, regional HCPs may provide greater conservation benefits to a covered species than project-by-project consultations because HCPs assure the long term protection and management of a covered species and its habitat.

Q. Are military lands being proposed as critical habitat?

Yes, some lands managed by the Department of Defense (DoD) are included as proposed critical habitat. Non-training areas and lands leased to the State on Marine Corps Base, Camp Pendleton (Camp Pendleton) are being proposed as critical habitat.

We are not proposing critical habitat on lands within MCAS, Miramar or the U.S. Navy’s Radio Receiving Facility at Coronado because these lands are covered by adequate Integrated Natural Resource Management Plans (INRMP).

For reasons relating to national security, we are not proposing critical habitat within mission-essential training areas on Camp Pendleton. We are seeking public comment on our decision to not propose critical habitat on mission-essential training areas on Camp Pendleton. The public may view maps showing mission-essential training areas overlaid with habitat for the San Diego fairy shrimp by appointment at the Carlsbad Fish and Wildlife Office at the address below, or on the Internet at <http://carlsbad.fws.gov>.

Although we are not proposing critical habitat for the California gnatcatcher on mission-essential areas, we are currently consulting with the Marine Corps regarding activities on upland areas of Camp Pendleton. This complex consultation covers about 150,000 acres of Camp Pendleton and, when completed, will address numerous activities on the upland areas to ensure they will not jeopardize the continued existence of the San Diego fairy shrimp.

Q. My private property is included in the proposed critical habitat boundaries, what happens now?

The proposed designation of critical habitat does not affect private, local, county, or State landowners unless they are undertaking a project on their land that requires Federal funding, permits, or authorization. Critical habitat does not require landowners to carry out any special management actions or restrict the use of their land. However, because the San Diego fairy shrimp is listed as an endangered species under the Act, individuals are prohibited from engaging in unauthorized activities that will harm the species.

If a project that requires Federal funding, permitting, or authorization is planned in an area proposed as critical habitat, then the agency responsible for providing the funds or permit would have to conference with the Service if the agency determines the project may affect the San Diego fairy shrimp or its proposed critical habitat.

Q. What is a conference?

If an action being undertaken, funded, or permitted by a Federal agency may affect the proposed critical habitat for the San Diego fairy shrimp the agency would have to conference with the Service to ensure the action will not adversely modify proposed critical habitat. At the conclusion of a conference, the Service issues a conference report or a conference opinion. A conference report contains recommendations the Federal action agency should take to reduce adverse effects on the species' proposed critical habitat.

A conference opinion includes recommendations to avoid adverse modification of proposed critical habitat, but does not provide incidental take coverage. Once critical habitat is designated, a conference opinion may be adopted by the Service as a biological opinion if it is determined that action will not adversely modify critical habitat.

Although conference reports and conference opinions are only advisory, the implementation of the recommendations can avert potential future conflicts once critical habitat is actually designated.

Q. What if my land was included in the final designation of critical habitat in 2000, but is not in the current proposal?

Lands that were designated as critical habitat on October 24, 2000 (65 FR 63680) are still in effect. If a project that requires Federal funding, permitting, or authorization is being planned in an area previously designated as critical habitat for the San Diego fairy shrimp then a consultation with the Service will be required to ensure the action will not jeopardize the species or adversely modify critical habitat.

When a final designation of critical habitat becomes effective the previously identified critical habitat areas will be superseded by the new, final designation.

Q. Does the designation of critical habitat create preserves?

No. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. It does not allow government or public access to private lands and will not result in closure of the area to all access or use.

Q. Is an economic analysis required as part of designating critical habitat?

Yes. The Service must take into account the economic impact of identifying any particular area as critical habitat. Unless the failure to designate an area as critical habitat would result in the extinction of the species, we may exclude an area from critical habitat if we determine that the benefits (economic and otherwise) of excluding it outweigh the benefits of including it. This determination is based on the best scientific, economic, and commercial information available.

The Service will provide separate notification to the public when the draft economic analysis becomes available for review and comment.

Q. How will any final designation of critical habitat affect activities for which a party has already consulted with the Service under section 7 of the Act?

Federal regulations require agencies to reinitiate consultation with the Service on previously reviewed actions if critical habitat is designated after the initial consultation and if those actions may affect critical habitat. This applies only if those agencies have retained some type of involvement or control over the action, or if such involvement is authorized by law.

Q. What is the status of the Vernal Pools Unit of the San Diego National Wildlife Refuge?

To protect and manage key habitats for listed species, help recover vernal pool species, and contribute to the goals of the MSCP, we approved the Vernal Pools Stewardship Project in April 1997. This project allows the Service to establish the Vernal Pools Unit of the San Diego National Wildlife Refuge. The purpose of this Refuge Unit is to provide for the long-term conservation of vernal pool habitats and their associated flora and fauna in the San Diego region. The establishment of this Refuge Unit will allow the Service to acquire and manage vernal pool habitat.

As part of the stewardship project, the Department of Defense is committed to continuing conservation of vernal pool resources at MCAS, Miramar under existing authorities and through the development of their INRMP.

The Stewardship Project is located within the City and County of San Diego in the following areas: Otay Mesa; areas near the Otay and Sweetwater Reservoirs; Del Mar Mesa; Lopez Ridge; MCAS, Miramar and adjacent lands; and Montgomery Field.

Q. Will the public be given an opportunity to comment on proposed critical habitat for the San Diego fairy shrimp?

Yes. The Service wants to ensure that any final action resulting from this proposal will be as accurate and as effective as possible. We are actively soliciting comments or suggestions from the public, other government agencies, the scientific community, industry representatives, and any other interested party. In particular, we are seeking comments regarding:

- (1) The reasons why any area should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;
- (2) Specific information on the amount and distribution of San Diego fairy shrimp habitat, and what habitat is essential to the conservation of the species and why;
- (3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;
- (4) Our determination to not propose critical habitat on mission-essential training areas on Camp Pendleton;
- (5) Our determination to not propose reserve areas within the boundaries of approved HCPs.

- (6) Our determination to not propose critical habitat on MCAS, Miramar or the U.S. Navy's Radio Receiving Facility at Coronado because these lands are covered by adequate Integrated Natural Resource Management Plans;
- (6) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;
- (7) Economic and other values associated with designating critical habitat for the San Diego fairy shrimp, such as those derived from non-consumptive uses (e.g., hiking, camping, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs);
- (8) Are associated watersheds of the vernal pools proposed as critical habitat essential for the conservation of the species and, if so, how should it be defined; and
- (9) Does the extent of the associated watersheds proposed to be designated as critical habitat comply with the regulatory requirement at 50 CFR 484.12(d).

Written comments and information on the proposed designation of critical habitat for the San Diego fairy shrimp will be accepted through 5:00 p.m. June 23, 2003, and should be sent to Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92009. Requests for a public hearing must be submitted in writing to the Carlsbad office by 5:00 p.m. on May 6, 2003.

Comments may also be submitted by electronic mail (e-mail) to **fw1sdfs@r1.fws.gov**. Please submit e-mail comments in ASCII format and avoid the use of special characters or encryption. Also, please include "Attn: RIN-1018-AI71" in the subject header, and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your e-mail, please contact the Carlsbad Fish and Wildlife Office at 760/431-9440.

All comments received, either written or oral, are given equal weight and will be considered during the decision-making process. Comments and materials received will be available for public inspection, by appointment, during normal business hours, at the Carlsbad Fish and Wildlife Office (phone: 760/431-9440).

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